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10/645,893	08/18/2003	Terry Vovan	03/143	3878

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EXAMINER

THAKUR, VIREN A

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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05/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/645,893

Applicant(s)

VOVAN, TERRY

Examiner

VIREN THAKUR

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period **will** apply and **will** expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply **will**, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-7 and 16-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-7 and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Examiner's Note

1. Upon reconsideration and the addition of art that was not previously relied on, the finality of the Office Action mailed March 5, 2007 has been withdrawn.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claim 7 recites the limitation "said narrowing is in the radial direction of the transition location with the radial direction being a direction radial to said vertical container axis. The limitation "the radial direction" does not provide sufficient antecedent basis to the claim. It is noted that "the radial direction" of the transition location does not provide any antecedent basis to "a radial direction" as defined in the transition location, in the claim 7 or claims 5 or 6.

Claim Rejections - 35 USC § 103

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4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. **Claims 5-7 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalmanides et al. (US 5613607) in view of Draenert (US 4671263), Elwell (US 1515560), Reid (US 5975322), Foster (US 5810209), Silk (US 7198169) and Schwartz (US 4305180).**

Regarding claim 5, and 18, Kalmanides et al. teach a cake container (Figure 2 and column 4, lines 9-15) which includes a base (figure 2, item 37) lying on a vertical container axis, said base having a cake supporting base surface (figure 4) having a largely cylindrical base peripheral wall (See figure 2, wall of base and column 7, lines 17-21) which extends around the cake supporting base surface. This can further be seen since the container cover (Figure 2, item 20) locks into place *within* the base, wherein the base comprises a wall which locks the cover into place. The cake container also includes a cover (Figure 2, item 20) that has a height greater than the base and

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has a largely cylindrical cover peripheral wall centered on the container axis. The base and the cover are each formed of a plastic sheet that has been deformed (column 6, lines 15-17) and the cover can be formed of a transparent plastic sheet (column 6, lines 31-43 and column 10, lines 64-6).

It is noted that Kalmanides et al., teach outwardly projecting regions on the cover, as shown in figure 2 item 30 and further teach the cover having radial projections, as shown in figures 10-24. On column 11, lines 7-17 and column 11, line 66 to column 12, line 11, Kalmanides et al. teach using radially extending ridges which interengage with a receiving portion on the base. It is noted that claim 18 does not distinguish whether the outwardly projecting dimples are on the base or on the cover. The prior art to Kalmanides et al. already teaches using a cover and a base with an interengagement locking feature, wherein a locking ridge is placed within a receiving portion and turned radially to lock the cover into the base. Nevertheless, Kalmanides et al. also broadly teaches the concept of a radially extending portion which interengages with a conformed receiving portion for the purpose of providing securement of a cake cover to the base.

Claims 5 and 18 differ in specifically reciting the orientation of the locking elements and the receiving regions: the base peripheral wall has a plurality of outwardly-projecting dimples and said cover peripheral wall has a plurality of dimple-receiving regions.

In any case, the reference to Elwell (US 1515560) teaches the concept of the base having the radial projection with the cover having the receiving portion (Figure 1,

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items 30 and 15). Additionally, Draenert has further been relied on to teach the conventionality of the concept of the base having the projection and the cover having the receiving channel (Figure 2, item 12 and Figure 1, items 14 and 16). The prior art references are analogous in teaching arrangements of locking mechanisms for cover and base elements. The prior art thus provides the teaching of the conventionality of locking elements on the base, with the receiving locking regions on the cover wherein the cover must be rotated to receive and lock onto the base. To therefore place the radially outwardly projecting portions on the base with the receiving portions on the cover would have been a reversal of parts that would have been an obvious matter of design and/or choice.

Claims 5-7 and 18-19 further differ from the prior art in the specifically reciting the particulars of the shape of the projection and the projection receiving end - that is, dimples and dimple receiving regions. The claims also recite wherein said dimple-receiving regions each have a chimney about as wide as one of said dimples to receive a dimple in a chimney upper portion by the cover being lowered around the base while chimney lower ends initially lie directly over said dimples. Claims 5-7 and 18-19 further differ in specifically reciting wherein the dimple receiving regions and the dimples can each deflect radially to assure that the dimples can be received in the dimple receiving regions with a narrowing in the radial direction.

Regarding Kalmanides et al., it is noted that figures 17, 18, 23, 26 and 27, show the concept of a cover engaging a base member, wherein the cover member is arcuately rotated relative to the base (Column 11, lines 38-45). In these figures, the

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cover is placed over the base so that the locking elements are accepted into a locking region on the base. As can be seen from the above mentioned figures, the receiving region comprises a chimney which can best be shown as the region encompassed by item 82 and 80 in figure 23. This chimney is considered about as wide as the element (60) which will be received there into. Even further, the reference to Silk (Figure 7, item 76) and Draenert (Figure 2, item 12 and Figure 1, items 14 and 16) further teach the conventionality of the concept of a chimney about as wide as the locking element. Figure 26 of Kalmanides et al. further shows the ridge or radial projection (60) first being placed into the chimney (82) and then being snapped through a narrowed transition region. The narrowed transition region and the locking of the cover to the base is described on column 13, lines 14-25, 31-59. The chimney guides the ridge (60) and the ridge (60) passes through a narrowing region (see the diagonal between item 77 and 81) to fit into the locking ledge (78-79). Kalmanides et al. further teaches that the ridge (60) becomes disengaged from the chimney (80) and then locks into tab (81), and this process results in an audible snapping sound (column 13, lines 48-67). This in and of itself teaches that the cover and base must deflect to some degree in order to cause a snapping sound. Furthermore it would have been obvious for radial deflection to occur, since the cover must be rotated over the base, and the ridge is guided through a chimney (80) and forced through a narrowing into a receiving region. This is further supported by Kalmanides et al.'s disclosure on column 14, lines 5-23, with respect to the opening of the container. A force is applied to release the cover from the base. Therefore, it would have been obvious that a force was also applied to the cover in

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order to push the ridge into the receiving locking section, while also causing an audible snapping sound.

In any case, the reference to Reid has been relied on for further evidence of the conventionality of providing a radially extending and deflecting portion for the purpose of providing a locking engagement of a cover to a base (figure 4, item 43 and 53). Item 53 would be considered a radial narrowing, since there is a channel into which the projection (43) is received and the depth of the receiving region can be seen to narrow radially, as a result of item 53. Reid further teaches on column 6, lines 22-37 that the lug (43) crosses over this radial narrowing (53), which is shallower than the threads 23. Reid further teaches on column 6, lines 50-57, that the plastic is resilient so as to allow for "snapping fit," thus teaching radial deflection of the narrowing. Analogously, Schwartz teaches in figure 2, an element that is guided through a channel and must deflect in order to lock into the element receiving region. Silk also shows this concept in figures 7-9. The radial narrowing through which Silk's lug must deflect can be seen in figure 9, item 84. Foster, in figure 7 and column 6, lines 7-13 and lines 28-33 teaches tabs that extend radially from the bottle neck through which lugs 116 must pass. When the lugs pass over these radial narrowing regions, the lug falls into recess 136 and resists circumferential and vertical movement. Draenert also teaches bayonet type locking features (Figure 1, items 14 and 16 and column 10, lines 27-38), wherein the bayonet lock is a snap closure that engages a pin (16). By snapping there would have been expected to have been deflection. The newly incorporated references are thus analogous to Kalmanides et al. in teaching particular types of locking engagements for a

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cover / base connection. The art is thus replete with teachings of the conventionality of a locking mechanism having a radial narrowing over which a dimple must pass, for the purpose of securing the dimple into a locking region. To therefore modify the similar locking mechanism of Kalmanides et al., where the locking ridge deflects through a narrowing, with an analogous locking mechanism wherein the narrowing is radial and the locking ridge passes over this radial narrowing to sit within a locking region would have been an obvious matter of design and/or choice for the purpose of achieving the desired securement of the cover to the base. Regarding the specific shape, it is noted that to use a dimple would have been an obvious matter of design and/or choice, since the art teaches radial deflection as a result of passing a locking ridge over a radial narrowing and then placing the locking ridge into a locking region, wherein the locking region conforms to the shape of the locking ridge element.

7. Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 5-7 and 18-19 above, in paragraph 4, and in further view of Zaikaner (D156860), Weiss (D214391) and Portnoy (US 4991811).

The limitations of claim 16, wherein the base and cover are constructed of a plastic sheet and the base having an upper surface at a predetermined height that supports the cake, the cover and sheet each having a center lying on a vertical container axis and each having a peripheral portion where said cover and base are detachably connected are rejected for the reasons given above with respect to claims 5-7. Regarding claims 16-17 it is noted that Kalmanides et al. teaches the concept of

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using stabilizing elements to provide strength and rigidity to the base (Column 7, lines 26-43).

Claims 16-17 differ from the combined teachings of the prior art in specifically reciting wherein the base is constructed with an upwardly-deformed projection that forms a star having at least four star points with sides that extend primarily radially, each projection having a top surface lying at said predetermined height, each star point formed by a pair of primarily radially extending elongated star point side portion of said upwardly-deformed projection that are angled to converge towards each other at locations progressively further from said axis.

Zaikaner teach a container wherein the base comprises radially extending portions that converge towards each other at locations farther from the center of the base (See Figure 3). Weiss also teaches wherein the radial projections are upwardly deformed. Portnoy similarly teaches a cake platter base comprising similar radially extending portions (Figure 2, Item 34), and a circular band (Figure 2, Item 16) radially outwardly spaced from said star. Portnoy further teaches wherein the extending portions (that form a star) are used for strengthening the plate (Column 4, Lines 35-38). Although the radially extending portions of Portnoy do not converge, Zaikaner teaches a similar configuration wherein the radial portions do converge. It would have been obvious to the skilled artisan, given the teachings of Portnoy that radially extending portions, such as those of Zaikaner, provide rigidity and support for a circular base of a container. Therefore, converging the radially extending portions would have been a matter of choice, which a person of ordinary skill in the art would have found obvious.

Response to Arguments

8. On page 4 of the appeal brief, applicant asserts that none of the references shows a cavity that receives a dimple after the cover has been lowered and is then turned. It is noted however, that Kalmanides et al. teach the concept of a locking element which, when received into a locked position is within a region that conforms to the shape of the locking element, as discussed above. On page 5 of the appeal brief, applicant asserts that none of the references show a separate cavity or a narrowing between the cavity and the top of the chimney. It is noted that Kalmanides et al. teach a separate cavity, as well as a chimney, as discussed above. The newly added references provide further evidence of the conventionality of appellants locking features. Regarding transparency, it is noted that Kalmanides et al. on column 10, line 64 to column 11, line 6, teach that the housing and display member are both made from transparent plastic material. Applicant's arguments with respect to claims 18 and 19 are similar to those arguments with respect to claims 5-7. Applicant's arguments with respect to claim 7 lacking antecedent basis have been considered but are not deemed persuasive. It is noted that claim 7 recites "said narrowing is in the radial direction of the transition location." The transition location, as referred to in claim 6 does not recite any radial direction. It is noted that said narrowing being in a radial direction would have proper antecedent basis, since the second half of the claim clarifies "the radial direction being a direction radial to said vertical container axis."

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Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5711442, figure 2, item 23; US 4434903, figure 1, item 16 and 32; US 4128184, figure 1, item 14; US 3833147, figure 1, item 86; US 3680745, figure 1, item 14 and 15; US 3351751, figure 1 and 2, item 30; US 3070251, figure 4, item 37. These references have been cited to further teach the conventionality of bayonet type locking mechanisms.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/V. T./
Examiner, Art Unit 1794

/Steve Weinstein/
Primary Examiner, Art Unit 1794